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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Silverstone et al.

Serial No.: 09/550,583

Filing Date: April 17, 2000

Title: AN INFORMATION PORTAL IN A
CONTRACT MANUFACTURING
FRAMEWORK

Group Art Unit: 3625

Examiner: Matthew S. Gart

Docket No: 60021-358401

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Chris Barncard
Chris Barncard

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPELLANTS' APPEAL BRIEF

Dear Sir:

In response to the Office communication dated September 1, 2004, Appellants appeal the rejections of Examiner Geoffrey R. Akers. As Examiner Akers has retired, this case is now being handled by Examiner Matthew S. Gart.

(1) REAL PARTY IN INTEREST

The present application has been assigned to Accenture LLP, an Illinois corporation.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to the present case.

(3) STATUS OF CLAIMS

Claims 1-14 and 22-28 are pending, and claims 1-14 and 22-28 are herein appealed. Claims 15-21 are cancelled. Claims 1-14 and 22-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”).

(4) STATUS OF AMENDMENTS

Amendments to claims 1-3, 8-10, 22-24 and 28 were filed subsequent to final rejection. Examiner Gart has not acted upon these amendments and therefore Appellants believe that the amendments have not been entered. Appendix A list the claims subject to appeal includes markings to show the amendments that were filed subsequent to final rejection.

(5) SUMMARY OF INVENTION

The present invention generally provides for a method and a computer program for providing a facility for bringing together parties who desire to enter into contracts for manufacturing services with providers of those manufacturing services. Specification, p. 8, lines 15-23. More specifically, Appellants' independent claim 1 generally¹ defines the invention as:

- (a) providing a database having a plurality of manufacturing service provider data structures, where each of the manufacturing service provider data structures includes a description of a particular manufacturing service provider as well as the manufacturing services provided by the manufacturing service provider that can be contracted for, and where the database further includes a set of hyperlinks to information; (*See*, Specification p. 21, lines 3-5; p. 24, lines 14-16; figure 3, element 302; figure 8, element 802)
- (b) identifying a particular manufacturing service provider data structure based on a user's request; (*See*, Specification p. 21, lines 7-8; figure 3, element 306; figure 8, element 804)

¹ The language has been modified to remove some of the legal verbiage so that the summary of the claim is easier to read in this section of the brief.

- (c) identifying a particular hyperlink based on the user request; (*See*, Specification p. 24, lines 17-19; figure 8, element 806)
- (d) sending the user the identified manufacturing service provider data structure as well as the hyperlink so as to identify to the user a particular manufacturing service provider; (*See*, Specification p. 24, lines 19-21; figure 8, element 808)
- (e) allowing the user to obtain additional information by using the hyperlink; (*See*, Specification p. 24, lines 20-21; figure 3, element 310; figure 8, element 810)
- (f) receiving order information for a new order from the user for manufacturing services from a particular manufacturing service provider; (*See*, Specification p. 41, line 27 to p. 42, line 7)
- (g) checking budget constraints (which are calculated by comparing the total of the new order plus past order costs against an ordering budget) to determine whether the cost of the new order would exceed the ordering budget; and (*See*, Specification p. 42, lines 8-14)
- (h) placing the new order for manufacturing services with the particular manufacturing service provider if the cost of the new order is within the budget constraints. (*See*, Specification p. 42, lines 16-19)

Claim 8 recites the method from claim 1 as a computer program embodied on a computer readable medium. Claims 22 and 28 together recite the method from claim 1, where claim 22 includes all of claim 1's limitations except for the hyperlinks. The hyperlinks are claimed in claim 28. For ease of discussion here, independent claims 1 and 22 will be discussed as if they contained the same limitations.

Claims 2, 9 and 23 recite the same method and computer program, further having data on how to contract with the service providers for manufacturing services. (*See*, Specification p. 21, lines 11-12, 25-28; Specification p. 24, lines 23-24)

Claims 3, 10 and 24 recite the same method and computer program, further having data on legal service providers. (*See*, Specification p. 21, lines 12-13; Specification p. 24, lines 24-25)

Claims 4 and 11 recite the same method and computer program, where the hyperlinks can be used to obtain information about patent licensing. (*See*, Specification p. 4, lines 17-18; Specification p.24, lines 27-28)

Claims 5 and 12 recite the same method and computer program, where the hyperlinks can be used to obtain information about multi-country licensing. (*See*, Specification p. 4, lines 19-20; Specification p. 24, lines 27-30)

Claims 6, 13 and 26 recite the same method and computer program, where the database is accessed via a network. (*See*, Specification p. 21, lines 16-17; Specification p. 24, line 30)

Claims 7, 14 and 27 recite the same method and computer program, where the network is the Internet. (*See*, Specification p. 21, line 17; Specification p.24, line 31)

Claim 25 recite the same method and computer program, where the data concerns pharmaceuticals. (*See*, Specification p. 9, lines 1-31; Specification p. 21, lines 15-16)

(6) ISSUES

A. Examiner Akers rejected claims 1-14 and 22-28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”). In making this rejection, has the Examiner made a *prima facie* case of obviousness in which there is proper motivation to combine the five teachings?

B. Examiner Akers rejected claims 1-14 and 22-28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”). In making this rejection, has the Examiner properly relied Elance as a reference under U.S.C. § 103(a)?

C. Examiner Akers rejected claims 2, 9 and 23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”). In making this rejection, has the Examiner properly relied on Sheflott’s figure 3 (elements 101, 100 and 90) as the basis for rejecting these three claims?

(7) GROUPING OF CLAIMS

Appellants request that the claims be grouped together for each contested ground of rejection in accordance with 37 C.F.R. § 1.192(c)(7), namely:

A. Rejections under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”); and

B. Rejections under 35 U.S.C. § 103(a) in which the “Sheflott” figure 3 (elements 101, 100 and 90) teachings are used as basis for rejecting claims directed to “data structures include data concerning contracting the service providers for manufacturing services”.

Based on these two grounds of rejection, the claims on appeal do not stand or fall together, and Appellants propose groupings for the claims on appeal as follows:

Group 1: Claims 1-14 and 22-28 are grouped together with respect to the rejections under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,802,493 (“Sheflott”) in view of U.S. Pat. No. 6,158,044 (“Tibbets”) in view of U.S. Pat. No. 6,073,109 (“Flores”) in view of www.elance.com (“Elance”) in view of U.S. Pat. No. 6,078,900 (“Ettl”).

Group 2: Claims 2, 9 and 23 are grouped together with respect to the rejection under 35 U.S.C. § 103(a) in which the “Sheflott” figure 3 (elements 101, 100 and 90) teachings are used as basis for rejecting claims directed to “data structures include data concerning contracting the service providers for manufacturing services”.

(8) ARGUMENT

A. Background

(1) Appellants filed the original application on April 17, 2000. The first substantive Office Action (Paper #8) addressing the merits of patentability was mailed on June 11, 2002, at which time Examiner Akers rejected pending claims 1-21 based on 35 U.S.C. § 103(a). The 35 U.S.C. § 103(a) rejection was based on the “Sheflott”, “Tibbets” and “Flores” references for claims 1, 2, 6-9, 13-16, 20 and 21. For claims 3-5, 10-12, and 17-19, the § 103(a) rejection was based on “Sheflott”, “Tibbets”, “Flores” and “Elance” references.

(2) Appellants responded to the Office Action on September 21, 2002, setting out arguments directed towards the differences between the claimed invention and the cited references. (Paper #11)

(3) On November 26, 2002, the Examiner issued a final Office Action (Paper #12), which maintained the 35 U.S.C. § 103(a) rejections.

(4) Appellants filed a Request for Continued Examination under 37 CFR § 1.114 on May 23, 2003. In the accompanying Amendment, Appellants cancelled claims 15-21, amended the independent claims 1 and 8, and added new claims 22-27. Appellants maintained their arguments to the rejections and asserted new arguments in response to the 35 U.S.C. § 103(a) rejections and argued that the Elance reference was improper. (Paper #14 and Paper #16)

(5) On June 17, 2003, Examiner Fischer issued a non-final Office Action (Paper #17), which maintained the 35 U.S.C. § 103(a) rejections and also applied the same rejections to the newly entered claims (i.e., the rejection was based on the “Sheflott”, “Tibbetts” and “Flores” references for claims 1, 2, 6-9, 13-16, 20-23, 26 and 27, and for claims 3-5, 10-12, 17-19, and 24 the rejection was based on the “Sheflott”, “Tibbetts”, “Flores” and “Elance” references).

(6) Appellants responded to the Office Action on October 15, 2003 by amending claims 1, 4, 5, 8, 11 and 12 and presented arguments that the cited references do not teach or suggest all of the elements claimed. (Paper #18)

(7) On November 3, 2003, Examiner Akers issued the second Final Office Action (Paper #19), which rejected all pending claims (i.e., 1-14, and 22-28) under 35 U.S.C. § 103(a) based on the “Sheflott”, “Tibbetts”, “Flores” and “Elance” references.

(8) Appellants responded on January 5, 2004 to the Office Action by amending independent claims 1, 8 and 22 with limitations not found or suggested in the cited references.

(9) Examiner Akers issued an Advisory Action (Paper #22) on January 14, 2004 in which he stated that the amendments would not be entered until an RCE was filed.

(10) On January 29, 2004, Appellants filed a Request for Continued Examination (Paper #23) under 37 CFR § 1.114. In the accompanying Amendment (Paper #24), independent claims 1, 8 and 22 were amended.

(11) On February 19, 2004, Examiner Akers issued another Office Action (Paper #25) in which he rejected the amended claims under 35 U.S.C. § 103(a) based on a combination of five references, i.e., “Sheflott”, “Tibbetts”, “Flores”, “Elance” and “Ettl”.

(12) Appellants filed a Response (Paper #26) on May 19, 2004, in which they argued that the rejection did not form a *prima facie* case of obviousness.

(13) Examiner Akers issued a final Office Action (Paper #27) on September 1, 2004, in which he asserted that Appellants arguments had not been persuasive. Examiner Akers maintained his 35 U.S.C. § 103(a) rejection with the five references.

(14) On October 29, 2004, Appellants filed an Amendment with further arguments.

(15) Examiner Akers issued another Advisory Action on November 8, 2004 (Paper # 20041109) in which he stated that “[n]o material arguments have been presented to advance prosecution”.

(16) Appellants filed a Notice of Appeal, which was received on November 29, 2004.

(17) After Examiner Akers retired, Appellants' Counsel discuss this case with Examiner Gart. Examiner Gart asked that a new Response be filed for his review. On February 2, 2005, Appellants filed the requested Response, in which claims 1-3, 8-10, 22-24, and 28 were amended in order to clarify the claims and to place the case in better position for appeal. Examiner Gart has not replied to this Response.

B. There is no Motivation to Combine the Five References

Claims 1-14 and 22-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of the five references “Sheflott”, “Tibbetts”, “Flores”, “Elance” and “Ettl”. Appellants oppose the § 103(a) rejection on the basis that it does not form a *prima facie* case of obviousness, and so Appellants respectfully request that the rejection to the claims be reversed.

(1) ***No Prima Facie Case of Obviousness has been Made for the Three Independent Claims***

Examiner Akers did not offer a proper *prima facie* case of obviousness for the three independent claims (1, 8 and 22), or if he did, then it has been rebutted by Appellants. To establish a *prima facie* case of obviousness, there are three criteria that must be met. First, there must be some motivation to combine the teachings in the references. Second, there must be a reasonable expectation of success. Third, the combination of references must teach or suggest all of the claim limitations. *See*, MPEP 2142. In the present case, at least the first and second criteria have not been met.

Examiner Akers asserted that one of ordinary skill in the art would determine that the “Sheflott”, “Tibbetts”, “Flores”, “Elance” and “Ettl” each included some suggestion or motivation that they could be combined with a reasonable expectation of success. In other words, if the five references are referred to as letters A through E, then Examiner Akers, in effect, has held that the combination of (A + B + C + D + E) teaches or suggests Appellants' invention.

As will shortly be discussed, Examiner Akers has not shown any real motivation to combine (A + B + C + D + E). Rather, he has, in hindsight, deemed that such a combination is obvious. However, when another examiner made an obviousness rejection by merely adding together a long string of prior art references, the CAFC reversed the rejection and characterized such thinking as trying to create a “prior art mosaic.” *In re Denis Rouffet, et al.*, No. 97-1492, 1998 WL 400169 (Fed. Cir. 1998).

The *Rouffet* court was not surprised that the examiner in question was able to show a combination of references that contained all of the claim elements since “virtually all inventions are combinations of old elements.” *Id.* If the Examiner only had to identify each claimed element in the prior art, then “very few patents would ever issue” since an Examiner could merely “use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention.” *Id.* Using the claim as such a blueprint is an “illogical and inappropriate process by which to determine patentability.” *Id.* (citing *Sensonics, Inc. v. Aerosonic Corp.*, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996)).

The CAFC once again addressed this issue in 2004. The CAFC held that an improper obviousness rejection might “break an invention into its component parts (A + B + C), then find

a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious.” *Richard Ruiz et al. v. A.B. Chance Co.*, No. 03-1333 (Fed. Cir., 2004). The “as of whole” requirement of § 103 prohibits such a form of “hindsight reasoning, using the invention as a roadmap [or blueprint] to find its prior art components” improper. *Id.*

In the present Application, Examiner Akers created his § 103 obviousness rejection by breaking Appellants' invention into its component parts and asserted that the combination of (A + B + C + D + E) teaches the various components. As such, Examiner Akers has (borrowing *Rouffet's* poetic term) merely created a “prior art mosaic”, which is improper.

(2) The Rationale for Combining the Five References is not Adequate

In *Rouffet*, the CAFC acknowledged that the Board of Appeals did not err when it found that the combination of the references contained all of the elements of the claims in the application. Rather, the CAFC determined that problem was that there was not an adequate showing that one skilled in the art would have been motivated to combine those references.

The Examiner “must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *In re Rouffet*. In *Rouffet*, the Board's decision was reversed because the Board did not explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination. Instead, the Board merely relied on the assertion that one skilled in the art would have a high level of skill and thus would recognize the ability to combine the references. The CAFC rejected this, stating that if “such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance.” *Id.* Instead, the “Board could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection.” *Id.*

Appellants are faced with a similar rejection: the Examiner does not offer a legitimate rationale for the combination of the five references that are directed to five distinct problems. Reviewing the references one finds the following problems that were solved by each reference:

Reference	Problem to Solve	Support within Patent
Sheflott	Provides a system enabling quick, consistent and accurate response to a request for information , such as an RFP	Summary of the Invention (col. 3, lines 59-61)
Tibbetts	Provides a computer toolset to create objects to provide data and function mapping as an interface between the user interface (front-end) and the transactional back-end system (such as a database system).	Detailed Description of the Invention (col. 3, line 60 – col. 4, line 9). Note: the abstract uses the term “Proposal”, which is given a specialized meaning in this patent and is not the type of proposal that an RFP from Sheflott. The web site for the assignee of the Tibbetts invention states its "Proposal" is a Java software object that models proposed units of work as they are conceived, shaped and finalized over time. <i>See</i> , www.epropose.com .
Flores	Provides a business with tools to manage its business processes by notifying the user that she has a task to complete, provide her with the tools and information to complete the task, allow her to see where the task fits in the overall process, and manage reminders to keep the process moving, etc.	Abstract
Elance.com	Provides an online marketplace for a small business to outsource projects (such as web development, graphic design, software, engineering, business strategy) to a pool of people providing such services .	http://www.elance.com/c/static/main/displayhtml.pl?file=about.html
Ettle	Provides an inventory management system that determines stocking levels for an inventory control mechanism	Summary of the Invention (col. 2, lines 58-65)

The above table shows the vast differences among the five references. Especially noteworthy is Tibbetts. The Tibbetts invention is a data mapping technique between a computer interface and a back-end computer system. The Sheflott invention was concerned with a system for delivering RFPs. The problem of data mapping and the problem of responding to an RFP would not be something combined by one in the art. Ettle offers a solution to determining stocking levels for a store's inventory. One would not consider combining inventory calculation

systems with a system that assists with providing answers for an RFP nor with a system that offers a solution to data mapping between a computer interface and a backend system.

Another method for ascertaining the problems being faced by the various inventors is to investigate the industries in which they are employed.

Reference	Assignee / Industry	Problem / Area of Concern
Sheflott	Aetna Life Insurance Company	generating a response document in reply to a business RFP ("request for proposal"), which is closely tied to an RFI ("request for information")
Tibbetts	ePropose, Inc., a software company	build a computer architecture in which a Java software object called a Proposal models proposed units of work as they are conceived, shaped and finalized over time. <i>See, www.epropose.com</i>
Flores	Action Technologies, Inc., a software company that provides solutions for Business Process Management (BPM). <i>See, www.actiontech.com</i>	manage business flows using linked workflows
Elance	Elance, Inc., an eCommerce company that improves the way companies buy and manage services. <i>See, www.elance.com</i>	provider a network pool of vendors that can be hired for various services.
Ettl	IBM	estimated stock levels in an inventory software package

Appellants do not believe that a business that offers process management, a life insurance company, an IBM division writing software for inventory management, and a company that develops a Java architecture platform could be viewed as solving the same problem.

All five references are directed to solving five distinct problems and so the Examiner cannot "show reasons that the skilled artisan, confronted with the same problems" would combine the references", as required by *In re Rouffet*.

Investigating the Office Actions, one finds little meaning to the Examiner's reasons to combine the references. First, the Examiner states that the motivation to combine Sheflott, Tibbetts and Flores is "to teach an architecture that takes advantage of the generic properties permitting it to be reusable for new types of transactions as enunciated by Tibbetts (col 1 lines 53-56). ... The further motivation to combine is to teach a system for analyzing and structuring

business process that provides clients with the requisite tools to manage these businesses efficiently as enunciated by Flores." Paper #25, pp. 4-5.

As shown in the above table and discussed above, the problem solved by Tibbetts was a system for providing a toolset of items with "generic properties" for use in an architecture to provide data mapping between an interface and a backend system. The Examiner's statement suggests that Tibbetts can be reused for any new type of transactions. A careful reading of the reference shows that the reusability is solely limited to building new data mapping objects each time a developer needs to connect an interface with a backend system. The uses contemplated by the Appellants' invention is not something that Tibbetts can be reused for.

Then the Examiner asserts that it would have been obvious to one skilled in the art at the time of the invention to combine the five references to teach Appellants' invention because the "motivation to combine is to teach a system for analyzing and structuring business processes in a manufacturing production environment for monitoring inventory management in the presence of constrained capital budgets as enunciated by Ettl (col 2, lines 41-44)" (Paper #25, p. 5). A system to monitor inventory and a system that provides a user with reminders and scheduling of business processes would not be combined. Furthermore these could not be combined to offer the type of system offered by the Appellants' invention. Here the inventor has simply used the key words of Elance.com ("analyzing and structuring business processes") with the key words of Ettl ("monitoring inventory management") and combined them in a single phrase even though a total reading of the references supports just how different the two inventions are.

In contrast to the above problems, Appellants' invention is directed to the problem of finding a service provider for manufacturing services, where the invention accepts a user's request, returns information on the service provider that best matches the request along with a hyperlink so that the user can access additional information about the service provider. Furthermore, the invention verifies budget constraints and as long as the budget isn't exceeded, allows the user to place an order for the manufacturing services.

To repeat again, by comparing the above table to the problem solved by the present invention, one can see that, for example, Tibbetts is directed to the very different problem of mapping data between a front-end and back-end computer system, and that Flores is directed to business project management rather than to a type of system for matching service providers to requests. A person skilled in the art searching for a solution to matching service providers to

requests for manufacturing services would not consider combining the five references, especially since one reference is directed to using objects to map data from a computer front-end system to a computer back-end system, and another reference is directed to ensuring business processes are managed by notifying a user that she has a task to complete, providing her with the tools and information to complete the task, allowing her to see where the task fits in the overall process, and managing reminders to keep the process moving, etc.

The above discussion refutes the motivations to combine that Examiner Aker's expressed in Paper #25. When Appellants argued that these motivations were inadequate and that the examiner was merely creating his own "prior art mosaic", Examiner Aker's replied with the following reasons for motivations:

- (i) "Sheflott teaches a method for generating a proposal response ... [and] Tibbetts teaches defining a set of specifications for all proposal components" and therefore one would be motivated to combine Sheflott and Tibbetts because "motivation is to establish a proposal response apparatus for workflow services and process designs." Paper #27, pp. 2-3.
- (ii) One is motivated to combine Sheflott, Tibbetts and Flores because the "motivation to combine here is to establish a proposal response apparatus for workflow services specifically suited to a designated RFP." Paper #27, p. 3.
- (iii) The motivation to combine Sheflott, Tibbetts, Flores and Elance is "to establish a proposal response apparatus for workflow and design services specifically suited to a particular RFP and which permits a procurement services and network of vendors to meet design(manufacturing) requirements". Paper #27, pp. 3-4.
- (iv) The motivation to combine Sheflott, Tibbetts, Flores, Elance and Ettl is "to establish a proposal response apparatus for workflow and design services specifically suited to a particular RFP and which permits a procurement services and network of vendors to meet design(manufacturing) requirements within an operating budget." Paper #27 p. 4.

Appellants point out that these new motivations offered by Examiner Akers are once again merely his quick hindsight of how he would like to combine them rather than any motivation expressed or suggested within the references themselves. As one proof of this, Appellants point out that in motivation (i) above, Examiner Akers is again suggesting that

generating a proposal paper for a RFP and a Java object that is named PROPOSAL and it used in a software architecture to store certain data elements and methods are somehow connected or interchangeable.

The Examiner's has not shown reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed, as required by *Rouffet* since the five cited references are directed to five distinct problems. Therefore, the Examiner has failed to make his *prima facie* case of obviousness and the 35 U.S.C. § 103 rejections should therefore be withdrawn. Using the claim as a blueprint to chain together the five references in hindsight is an "illogical and inappropriate process by which to determine patentability." *Rouffet*.

(3) The Rejections to the Dependent Claims are also Improper

Claims 2, 9 and 23 recite the same method and computer program from the independent claims, further having data structures that include data on how to contract with the service providers for manufacturing services. (*See*, Specification p. 21, lines 11-12, 25-28; Specification p. 24, lines 23-24). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 2, 9 and 23, and Appellants respectfully request that the § 103 rejections be reversed.

Claims 3, 10 and 24 recite the same method and computer program from the independent claims, further having data on legal service providers. (*See*, Specification p. 21, lines 12-13; Specification p. 24, lines 24-25). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 3, 10 and 24, and Appellants respectfully request that the § 103 rejections be reversed.

Claims 4 and 11 recite the same method and computer program from the independent claims, where the hyperlinks can be used to obtain information about patent licensing. (*See*, Specification p. 4, lines 17-18; Specification p.24, lines 27-28). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 4 and 11, and Appellants respectfully request that the § 103 rejections be reversed.

Claims 5 and 12 recite the same method and computer program from the independent claims, where the hyperlinks can be used to obtain information about multi-country licensing. (See, Specification p. 4, lines 19-20; Specification p. 24, lines 27-30). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 5 and 12, and Appellants respectfully request that the § 103 rejections be reversed.

Claims 6, 13 and 26 recite the same method and computer program from the independent claims, where the database is accessed via a network. (See, Specification p. 21, lines 16-17; Specification p. 24, line 30). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 6, 13 and 26, and Appellants respectfully request that the § 103 rejections be reversed.

Claims 7, 14 and 27 recite the same method and computer program from the independent claims, where the network is the Internet. (See, Specification p. 21, line 17; Specification p.24, line 31). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claims 7, 14 and 27, and Appellants respectfully request that the § 103 rejections be reversed.

Claim 25 recite the same method and computer program from the independent claims, where the data concerns pharmaceuticals. (See, Specification p. 9, lines 1-31; Specification p. 21, lines 15-16). Nowhere do the cited references teach or suggest this limitation. For this additional reason, the cited references fail to teach or suggest every element of claim 25, and Appellants respectfully request that the § 103 rejection be reversed.

C. Elance cannot be used as Prior Art

In the May 2003 Response (Papers # 14, 16), Appellants argued that Elance was not a proper prior art reference as it did not show a teaching that was more than one year prior to Appellants' filing date of April 17, 2000.

In Paper # 17 (p. 7), Examiner Akers stated that Elance was founded in 1998 and was therefore a valid reference. At that time, Appellants did not know of a way to prove whether Elance's activities in 1998 and 1999 were the activities relied upon by the Examiner. However, in the course of preparing this Appeal Brief, Appellants' research has now discovered that Elance did not publicly launched its on-line service until March 2000. (See, PC World article dated

February 17, 2000, available on-line at www.pcworld.com/news/article/0,aid,15365,00.asp, a copy of which is attached as Appendix B.) Therefore, its activities in 1998 and 1999 must have been devoted to initial development. Such development would not have been published or used in public. As the article states, it wasn't until March 2000 (just 1 month prior to Appellants' filing date) that Elance's eCommerce service was first available for use. Thus, Appellants now once again assert that the Elance reference cannot be used as prior art against the present application. For at least this reason, Examiner Akers has not made a valid *prima facie* obviousness rejection so the 35 U.S.C. § 103 rejections should be withdrawn.

D. The References Do Not Teach or Suggest the Limitations in Claims 2, 9 and 23

Appellants assert that claim 2 (and corresponding claims 9 and 23) is allowable, even though Examiner Akers repeatedly ignored Appellants' request for clarification for the claim 2 rejection. After the current amendment, which seeks to clarify the claim, claim 2 reads:

“A method as recited in claim 1, wherein the service provider data structures include data concerning contracting the manufacturing service providers for manufacturing services.”

As the claims and specification state, the invention in claims 1 and 2 is a method to find service providers that can be contracted for manufacturing and manufacturing management. Pages 8, 9 and 10 of the specification discuss such manufacturing services, and state that pharmaceutical companies who need to purchase certain chemical compounds may use the invention's method to find service providers who may be contracted to manufacture those chemical compounds (*See*, Specification p. 8, lines 16 to 23). Some of the service providers may also be contracted for their manufacturing services related to the manufactured chemicals, such as “process design”, “route optimization”, “analysis” services, “legal raw materials” services, “regulatory” services, etc. (*See*, Specification p. 8, lines 29 to 31). The present invention leverages a database having information about various contract manufacturing organizations (“CMOs”) (page 8, lines 8-13). The database is used to “post information concerning contract manufacturing organizations' capabilities surrounding contract manufacturing” such as “technologies, processes, equipment, etc.” (*See*, Specification p. 9, lines 23-28).

Claim 2 limits the type of service providers that are stored on the invention's database to only those service providers who can be contracted for their manufacturing services. As just discussed, such contracted manufacturing services may be process design services, route optimization services, regulatory services, etc. The Examiner's rejection of this claim has been very confusing.

In the first office action (Paper #8), the Examiner rejected claim 2 on the basis that: "Sheflott teaches ... the step of matching the user to a service provider includes optimization services (Fig 3/101/100/90)." Turning to the elements in Sheflott that were cited by the examiner (i.e., elements 101, 100 and 90 in figure 3) one sees that element 101 is labeled "develop financials & pricing", element 100 is labeled "financials database" and element 90 is "good match?". These elements do not teach a data structure having information about service providers who can be contracted for their manufacturing services.

To understand the cited elements one must first understand the Sheflott invention as a whole. Sheflott teaches a method for "generating responses to questionnaires" (col.1 , lines 5 and 6), used by health insurance companies in responding to Requests for Proposals ("RFPs") (col. 5, lines 37 to 40). Such an RFP "contains a questionnaire with a large number of questions to be answered by the health insurance company" (col. 5, lines 58 to 60). One of the first steps of responding to an RFP is shown in figure 3, which starts by determining whether the company's employees (i.e., those who will be using the services of the health insurance policies) are geographically located near the "doctors and other health care providers that are associated with the proposed [health] plan" such that the employees and the health plans appear to be a good match (col. 6, lines 55 to 61, describing figure 3).

Element 90 (cited by the examiner) determines whether it appears that the location of where the employees live is a good match to the location of the health care providers that are part of the potential health plan. If so, then a financial database (element 100) is used by element 101 to develop financial and pricing information that is used in deciding whether or not the health insurance company should respond to the questionnaire with a quote for its health insurance policies (col. 7 lines 32 to 39, describing element 101). Sheflott's figure 3 does not teach or suggest providing manufacturing or manufacturing management services under a contract, as is required by the claims. The database 100 stores financial information, not manufacturing services provided by each of a plurality of service providers, as required in the claims. Figure 3

does not deal with manufacturing services as specifically required in claim 2. Therefore, Appellants respectfully submit that Sheflott neither teaches nor suggests all of the limitations found in claim 2.

In his second office action (Paper #12), the Examiner rejected claim 2 under a combination of teachings from Sheflott, Tibbetts and Flores, by stating that:

“Sheflott teaches ... the step of matching the user to a service provider includes optimization services (Fig 3/101/100/90). Tibbetts teaches coordinating actions between proposal and any consumer, which leads to optimizations (Fig 6/603)(Fig 7). Flores teaches workflow management and workflow schedule processing (Fig 2) and performance optimization (Fig 1) and satisfaction optimization (Fig 3).”

The Examiner said that it would have been obvious to combine these references within a contract manufacturing environment, with the motivation to combine being: “analyzing and structuring business processes that provides clients with the requisite tools to manage these businesses efficiently as enunciated by Flores”.

Thus, for the second time, claim 2 (which is directed to a data structure for holding data about providers who can be contracted for their manufacturing services) was rejected on the basis of a teaching of “optimization services” which allows efficient management of businesses. Regrettably, this rejection does not make logical sense to Appellants since claim two is concerned with information in a database about “manufacturing services”, such as for manufacturing chemicals and other mixtures. In Appellants' response (Paper #14 and #16), Appellants again pointed out the contents of claim 2 and stated that “the contentions by the Examiner [that this claim is about optimization services] ... do not bear on claim 2 as written”.

As discussed above, Sheflott does not teach or suggest the necessary limitations of claims 1 or 2. Now the contents of Tibbetts and Flores will be discussed and shown to be likewise irrelevant (alone or in combination). The former examiner relied on figure 6 (element 603) and figure 7 from Tibbetts in rejecting claim 2. As previously discussed in the 5/19/2004 response, Tibbetts' invention provides a computer toolset to create objects to provide data and function mapping as an interface between the user interface (front-end) and the transactional back-end system (such as a database system) (col. 3, line 60 – col. 4, line 9). The Tibbetts patent uses the

term “proposal”, but this term is given a specialized meaning in this patent and is not the type of real-life proposal that might be the result of an RFP or that might be sent to a contract manufacturer.

As Tibbetts’ Summary of the Invention states: “an object called a ‘Proposal’ that is independent from the user interface front-end and the transaction processor back-end” is created and this way of using Proposal objects ensures that the system “is aware of its own hierarchical structure and is able to preserve data validity” (col. 1, lines 60 to 67). The Proposal object “includes not just the data mapping behavior, but other useful transaction-formation behaviors such as document navigation, error and annotation-handling, and versioning” (col. 4, lines 17 to 19). Thus, a “proposal” as defined and taught in Tibbetts is actually a data object stored in a computer system that contains document handling information. This is shown in figure 6 as element 603 in that drawing is a User Interface Coordinator and does such things as “prompts for next entry”, “displays next page” and “populates hierarchic viewers” (text shown in element 603).

Figure 7 also shows that Tibbett’s use of ‘proposal’ is for a data object in a computer system. Figure 7 shows is a “lifecycle of a Proposal object according to the invention” (col. 2, lines 58 and 59). In this lifecycle, a

“developer 701 defines the Proposal Specification 702 15 using the Proposal Specification Builder 703. All Proposal Specifications 704 that are defined are placed in a repository 705 which holds all of the possible specifications for a Proposal [object]. A user 706 selects the appropriate Proposal Specification 20 for the desired type of Proposal from the repository 705. The Proposal [object] is created through the Proposal Factory 707 and a Proposal 708 is made available to all users 706, 709. The users can add, change, and annotate data to the Proposal [object] 708. Proposal updates are submitted to the DBMS or TP monitor 710. If any errors occur in the updates, error messages are added to the Proposal [object] 708.” (col. 5, lines 20 to 25)

The Examiner has relied on Tibbetts’ teaching of “coordinating actions between proposal and any consumer, which leads to optimizations”, but this is not the purpose of the “Proposal

Object” taught by Tibbetts, and furthermore such a Proposal object does not teach or suggest a way to provide access to a database of providers of manufacturing services, including a database having a data about providers who can be hired under contract for their manufacturing services.

Moving on to Flores, the former examiner held that it teaches “workflow management and workflow schedule processing (Fig 2) and performance optimization (Fig 1) and satisfaction optimization (Fig 3).” Without going into the details of Flores, Appellants assert that it even if Flores does teach “workflow management, ... workflow schedule processing ... performance optimization ... and satisfaction optimization”, such a teaching fails to teach or suggest what is required in claim 2, namely a database having data about providers that can be hired through a contract for their manufacturing services related to their manufacturing.

After Appellants presented its arguments to the Examiner that a combination of Sheflott, Tibbetts and Flores cannot teach or suggest all of the limitations of claim 2, in his third office action (Paper #17), the former Examiner retreated to his earlier rejection and held that Sheflott on its own teaches claim 2 because “Sheflott teaches a method ... wherein the step of matching the user to a service provider includes optimization services (Fig 3/101/100/90).” However, previously the examiner had implicitly admitted claim 2 cannot be rejected based solely on Sheflott when he changed his rejection to bring in Sheflott in combination with Tibbetts and Flores. Furthermore, for the third time, the former Examiner did not explain why he feels teaching optimization services reads on “data structures [with] data concerning providers of manufacturing services under a contract”. In its response to this third office action, Appellants pointed out for the third time that the former Examiner has not explained why he believed “optimization services ... have any bearing on claim 2” since claim 2 is not about optimization services, but is about data structures holding information about various companies that provide manufacturing services.

In both his fourth office action (Paper #19) and fifth office action (Paper #25), the Examiner maintained the rejection of claim 2, stating simply that “Sheflott teaches ... the step of matching the user to a service provider includes optimization services (Fig 3/101/100/90).” In neither of these office actions did the former Examiner explain how figure 3 in Sheflott is similar to a database with data structures for various companies that can be contracted to provide manufacturing services of specialized chemicals. In his sixth office action (Paper #27), the

former examiner simply said that “The rejections as cited in the non-final office action are ... maintained.”

As a result of these office actions, Appellants are presently in the position of defending claims 2, 9 and 23 against a nonsensical rejection of Sheflott’s teachings in figure 3 (elements 101, 100 and 90). Again, this portion of Sheflott determines whether the company’s employees (i.e., those who will be using the services of the health insurance policies) are geographically located near the doctors are associated with the proposed health plan such that the employees and the health plans appear to be a good match, and if so, then using a financial database to develop financial and pricing information that is used in deciding whether or not the health insurance company should respond to the questionnaire with a quote for its health insurance policies (col. 7 lines 32 to 39, describing element 101). Appellants continue to assert that this teaching does not teach or suggest what is claimed in claims 2, 9 and 23, namely: “data structures include data concerning contracting the service providers for manufacturing services”.

Appellants have asked repeatedly for the Examiner to explain his reasoning in more detail. The former Examiner failed his examination duty. The MPEP states that “to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application” MPEP § 707.07(f) (emphasis added). Furthermore, “the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it” MPEP § 707.07(f). In response to Appellants' requests for clarification, the former Examiner has stated that the Appellants' arguments have been fully considered but they are not persuasive. This cursory response does not “include a rebuttal of any arguments raised in the Applicant’s reply” or clearly develop the grounds of rejection “to such an extent that applicant may readily judge the advisability of an appeal” as required by MPEP § 706.07. Accordingly, the former Examiner in his office action has failed to establish a valid final rejection, and Appellants respectfully request concession of the above arguments and allowance of claims 2, 9 and 23.

(9) CONCLUSION

Pending claims 1-14 and 22-28 remain rejected under 35 U.S.C. § 103 as being unpatentable over the cited references. Appellants respectfully assert that these rejections are

improper for the various reasons discussed above and request that the Board of Patent Appeals and Interferences reverse the Examiner's decision.

Should any additional fees be necessary, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901 (Reference #60021-358401).

Respectfully submitted,

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Attachments: Appendix A (Claims Subject to Appeal)
Appendix B (PC World Article)

APPENDIX A

Claims Subject to Appeal

1. (Amended subsequent to final rejection) In a contract manufacturing framework, a method of providing access to ~~contract~~ manufacturing services and manufacturing management services that can be contracted, the method comprising the steps of:
 - (a) providing a database including a plurality of manufacturing service provider data structures, wherein each manufacturing service provider data structure includes a description of a particular manufacturing service provider and ~~contract~~ manufacturing services provided by the manufacturing service provider that can be contracted for, and wherein the database further includes a plurality of hyperlinks to information;
 - (b) identifying a particular manufacturing service provider data structure based on request data from a user;
 - (c) identifying a particular hyperlink based on the request data;
 - (d) sending the user the identified manufacturing service provider data structure so as to identify to the user a particular manufacturing service provider, and sending the user the identified hyperlink;
 - (e) allowing the user to obtain additional information utilizing the identified hyperlink;
 - (f) receiving order information for a new order from the user for manufacturing services from a particular manufacturing service provider stored in the database;
 - (g) checking budget constraints, wherein budget constraints are calculated by comparing cost of the new order plus past order costs against an ordering budget to determine whether the cost of the new order would exceed the ordering budget; and
 - (h) placing the new order for manufacturing services with the particular manufacturing service provider if the cost of the new order is within the budget constraints.
2. (Amended subsequent to final rejection) A method as recited in claim 1, wherein the service provider data structures include data concerning contracting the manufacturing service providers for manufacturing services ~~contract service providers~~.

3. (Amended subsequent to final rejection) A method as recited in claim 2, wherein the manufacturing service provider data structures further include data concerning legal services.
4. (Previously presented) A method as recited in claim 1, wherein the identified hyperlink is capable of being utilized to obtain information concerning patent licensing.
5. (Previously presented) A method as recited in claim 1, wherein the identified hyperlink is capable of being utilized to obtain information concerning multi-country licensing.
6. (Original) A method as recited in claim 1, wherein the database is accessed utilizing a network.
7. (Original) A method as recited in claim 1, wherein the network is the Internet.
8. (Amended subsequent to final rejection) A computer program embodied on a computer readable medium for providing access to ~~contract~~ manufacturing services and manufacturing management services that can be contracted, in a contract manufacturing framework comprising:
 - (a) a code segment for providing a database including a plurality of manufacturing service provider data structures, wherein each manufacturing service provider data structure includes a description of a particular manufacturing service provider and ~~contract~~ manufacturing services provided by the manufacturing service provider that can be contracted for, and wherein the database further includes a plurality of hyperlinks to information;
 - (b) a code segment for identifying a particular manufacturing service provider data structure based on request data from a user;
 - (c) a code segment for identifying a particular hyperlink based on the request data;
 - (d) a code segment for sending the user the identified manufacturing service provider data structure and so as to identify to the user a particular manufacturing service provider, and sending the user the identified hyperlink;

- (e) a code segment for allowing the user to obtain additional information utilizing the identified hyperlink;
 - (f) a code segment for receiving order information for a new order from the user for manufacturing services from a particular manufacturing service provider stored in the database;
 - (g) a code segment for checking budget constraints, wherein budget constraints are calculated by comparing cost of the new order plus past order costs against an ordering budget to determine whether the cost of the new order would exceed the ordering budget; and
 - (h) a code segment for placing the new order for manufacturing services with the particular manufacturing service provider if the cost of the new order is within the budget constraints.
9. (Amended subsequent to final rejection) A computer program as recited in claim 8, wherein the service provider data structures include data concerning contracting the manufacturing service providers for manufacturing services ~~contract service providers~~.
10. (Amended subsequent to final rejection) A computer program as recited in claim 9, wherein the manufacturing service provider data structures further include data concerning legal services.
11. (Previously presented) A computer program as recited in claim 8, wherein the identified hyperlink is capable of being utilized to obtain information concerning patent licensing.
12. (Previously presented) A computer program as recited in claim 8, wherein the identified hyperlink is capable of being utilized to obtain information concerning multi-country licensing.
13. (Original) A computer program as recited in claim 8, wherein the database is accessed utilizing a network.
14. (Original) A computer program as recited in claim 8, wherein the network is the Internet.

15. – 21. (canceled)

22. (Amended subsequent to final rejection) In a contract manufacturing framework, a method of providing access to ~~contract~~ manufacturing services and manufacturing management services that can be contracted, comprising the steps of:

- (a) providing a database including a plurality of manufacturing service provider data structures, wherein each manufacturing service provider data structure includes a description of a particular manufacturing service provider and descriptions of ~~contract~~ manufacturing services provided by the manufacturing service provider that can be contracted for;
- (b) receiving request data concerning a desired manufacturing service from a user;
- (c) querying the database using the request data;
- (d) identifying a particular manufacturing service provider data structure based on said desired manufacturing service so as to identify to the user a particular manufacturing service provider capable of providing said desired manufacturing service;
- (e) sending the user the identified manufacturing service provider data structure ;
- (f) receiving order information for a new order from the user for manufacturing services from a particular manufacturing service provider stored in the database;
- (g) checking budget constraints, wherein budget constraints are calculated by comparing cost of the new order plus past order costs against an ordering budget to determine whether the cost of the new order would exceed the ordering budget; and
- (h) placing the new order for manufacturing services with the particular manufacturing service provider if the cost of the new order is within the budget constraints.

23. (Amended subsequent to final rejection) A method as recited in claim 22, wherein the service provider data structures further include data concerning contracting the manufacturing service providers for manufacturing services ~~contract service providers~~.

24. (Amended subsequent to final rejection) A method as recited in claim 23, wherein the manufacturing service provider data structures further include data concerning legal services.
25. (Previously presented) A method as recited in claim 22, wherein the request data includes data concerning pharmaceuticals.
26. (Previously presented) A method as recited in claim 22, wherein the database is accessed utilizing a network.
27. (Previously presented) A method as recited in claim 26, wherein the network is the Internet.
28. (Amended subsequent to final rejection) A method as recited in claim 22, wherein each manufacturing service provider data structure further includes a hyperlink to information; and wherein the step of sending the user the identified manufacturing service provider data structure comprises sending the hyperlink as part of the manufacturing service provider data structure.

APPENDIX B


PC World Article

PCWorld.com - Why Freelance When You Can eLance?

Page 1 of 2

Article dated
2/17/2000

eLance system
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Why Freelance When You Can eLance?

Site puts freelancers to work, and offers them the tools to complete the job.

Anne Fischer Lent, special to PC World
Thursday, February 17, 2000

Imagine an Illustrator in Russia or Chile pulling in the same hourly rate as designer in New York City. They can. That's the beauty of eLance, an online marketplace where freelancers can post their services and others can bid.

It's easiest to think of eLance as a kind of eBay for services, but the Web site scheduled to launch March 1, is more than a marketplace. You can rent a server on the eLance server and use software tools on the site.

Both buyers and sellers can use the shared file system to exchange and view, can communicate on private message boards. And instead of investing in expensive software, the freelancer can rent time on PhotoShop or project-management software.

The site even offers a solution for the payment problems that challenge e-commerce sites. Using what it calls a "Global Trust System," eLance will take payment from buyer or bidder and put it in an escrow account. When the job is complete and satisfactory, eLance will disburse the funds to the freelancer in the appropriate currency.

As a participating freelancer, you'll incur some costs, too. The site will charge a nominal posting fee of \$1 to \$2 and then will take about 5 to 6 percent on top of scale, depending on such factors as the size of the project and how often the freelancer frequents the site, says Beerud Sheth, chief executive officer of eLance.

Variety of Services

Buyers and sellers have been testing eLance free of charge since August. eLance already boasts hundreds of unique services ranging from computer engineering to Web site development to poets and feng shui experts. Services are grouped into categories, such as Computer, Creative, Family & Household, Medical, Personal & Miscellaneous.

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